

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DAVID VELASQUEZ,

Plaintiff,

V.

A. BARRIOS; C. GRAY; C. ROBERTSON; M. LEVIN; F. PASCUA; R. TORREZ; GONZALES; FLINT, S. THOMAS; C. HALL; N. GRANNIS; L.E. SCRIBNER,

## Defendants.

Civil No. 07cv1130-LAB (CAB)

**ORDER DENYING PLAINTIFF'S  
MOTION FOR AN INJUNCTION  
[Doc. No. 44]**

Plaintiff David Velasquez (“Plaintiff”), a state prisoner proceeding *pro se*, filed this action under 42 U.S.C. § 1983. On February 15, 2008, Plaintiff filed an “Injunction on California Department of Corrections.” [Doc. No. 44.] In the motion for an injunction, plaintiff alleges that a lot of his “legal mail” has been coming to him opened and retaped. [Doc. No. 44 at 2.] Plaintiff apparently seeks an injunction preventing corrections officers from opening Plaintiff’s mail. *Id.* For the reasons set forth below, plaintiff’s motion is **DENIED**.

A federal court is a court of limited jurisdiction and, as a threshold matter, must have before it a case or controversy. *Flast v. Cohen*, 392 U.S. 83, 94 (1968). In the absence of such a case or controversy, the court has no power to hear the matter. *Rivera v. Freeman*, 469 F.2d 1159, 1162-63 (9th Cir. 1972). “A federal court may issue an [order] if it has personal jurisdiction over the parties and subject matter jurisdiction over the claim; it may not attempt to determine the rights of persons not

1 before the court.” *Zepeda v. United States Immigration Service*, 753 F.2d 719, 727 (9th Cir. 1985).

2 Here, Plaintiff’s First Amended Complaint alleges violations of his constitutional rights under  
3 the Eighth and Fourteenth Amendments. However, Plaintiff’s allegations in the current motion, that  
4 Plaintiff’s mail allegedly is being illegally opened by corrections officers, were not included in the  
5 complaint. The issuance of the order and/or injunction sought by Plaintiff in this motion would not  
6 address any of the claims alleged in current action. Accordingly, because this Court lacks jurisdiction to  
7 issue such an order or injunction, Plaintiff’s motion is **DENIED**. *See Michael v. Napa County*, 709 F.2d  
8 1268, 1273 n.4 (9th Cir. 1983)(stating the Court need not consider claims which are not included in the  
9 complaint).

10 **IT IS SO ORDERED.**

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12 DATED: February 25, 2008

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CATHY ANN BENCIVENGO  
United States Magistrate Judge

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